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VIA ECF

November 16, 2006

Honorable Nicholas G. Garaufis, USDJ  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Microsoft Corporation v. Infoserve Technologies Corp., et al.  
06 CV 3445 (NGG)

Dear Judge Garaufis:

This letter is in response to Plaintiff's counsel letter dated November 2, 2006 sent to your Honor. We object to Microsoft's attempt to avoid answering the counterclaim prior to the time it interposes a motion to dismiss.


From a factual standpoint, the Defendants' Counterclaims are stated with vastly more specificity than any claims set forth in Microsoft's Complaint. As set forth in the Counterclaims, the true facts of this case differ substantially from what Microsoft had presented to the press—i.e., that Microsoft sent out “secret shoppers” to the various defendants' computer shops and purchased pirated copies of Microsoft's products.

An issue is raised with respect to whether Microsoft's agents have acted in a similar manner in those other cases; essentially, seeking to entrap a handfull of downstream vendors of Microsoft products (which do not have direct distribution agreements with Microsoft) for an anti-piracy publicity drive. More to the point, the facts set forth in the first and second counterclaim establish the elements of defamation of business reputation.

In light of the facts set forth in the counterclaim, it is understandable why Microsoft would not want to answer to those charges. However, Microsoft's reluctance on this issue is perhaps an even greater reason to get Microsoft on the record in that regard. Thank you.

Very truly yours,

WU & KAO

  
Allen Wu, Esq.

AW/mc

cc: James P. Doyle, Esq.  
Infoserve Technologies Corp.

W&K/G/Infoserve/Judge ltr/111506/18